United Nations A/HRC/29/36/Add.6

General Assembly

Distr.: General
10 June 2015

English only

Human Rights Council
Twenty-ninth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report by the Special Rapporteur on the human rights of migrants, François Crépeau

Addendum

Follow-up mission to Italy (2-6 December 2014)*

* Reproduced as received.

GE.15-09390 (E)
1509390

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Follow-up mission to Italy: comments by the State on the report of the Special Rapporteur on the human rights of migrants

The following document represents the views and comments of the Government of Italy in respect of the Report of the Special Rapporteur on the human rights of migrants, drafted following a visit from 2 to 6 December 2014.

Proposed amendments to the report of the Special Rapporteur on the human rights of migrants by the Ministry of Foreign Affairs and International Cooperation, Inter-ministerial Committee of Human Rights of the Italian Government.

II. General background on Italy and migration: a brief overview

Para. 8:

Italy received over 170.000 arrivals in 2014, most of whom were rescued at sea by the Italian navy operation Mare Nostrum beside the Italian Coast guard SAR activity outside Italian Search and Rescue Region (SRR).

III. Normative and institutional framework on migration and border management

IV. Border Management

A. Rescue at sea

Para. 42 Italian Coast Guard:

Lybia does not have SAR capacity. Malta and Greece have limited SAR capacity in Central Mediterranean area and do not assume responsibility for coordinating SAR operations outside their SRR as Italy is normally the first RCC to receive distress calls by migrants. Consequently, Italy is coordinating SAR for the entire Central Mediterranean, outside its Search and Rescue Region (SRR), covering an area of about 600.000 km2 in front of Lybia, where there is no competent RCC or actual SAR organization.

Although they feel committed to their rescue work, the Italian Coast Guard (also managing IMRCC) also have their capacity limitations when coordinating SAR operations far away from Italian SRR. That implies also the impossibility to relieve easily the merchant vessels in the area of the burden of their SAR obligations.

Para. 43 Mare Nostrum:

Italy launched a naval SAR operation called *Mare Nostrum*, beside the Italian Coast guard SAR activity outside the Italian Search and Rescue Region (SRR). [see II.8]

The Italian Navy employed an average of five of its ships and their air units also for SAR operations in cooperation with IMRCC (Italian Coast Guard).

Para. 44:

The Special Rapporteur noted the extraordinary efforts of *Mare Nostrum*, which managed to rescue over 170.000 persons.

Para. 46 Merchant vessels

Private vessels are heavily engaged in cooperating in SAR operations according with the international laws, by their own or at the request of the competent RCC. In 2014, almost 900 merchant vessels were involved in SAR operations.

B. Cooperation with FRONTEX

Para. 47:

The management of Italy's external borders is further supported by the EU border agency FRONTEX. FRONTEX works with Border Police, *Guardia di Finanza*, Carabinieri, supported also at sea by Navy and Italian Coast Guard, to combat irregular migration, migrant smuggling and migration related crimes.

D. Regional processes

Para 55-57:

Italy is strongly committed in implementing the Khartoum Process (KP), a new political dialogue on migration with the countries of the Horn and Eastern Africa, as well as the main Mediterranean transit countries, thus gathering countries of origin, transit and destination along the migratory route from the Horn of Africa to Europe. The parties are the EU member States, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tunisia, the European and African Union Commissions. The KP was launched with a Ministerial Conference held in Rome on November 28, 2014 and adopted a Political Declaration listing the main goals of the Process such as: better organizing legal migration and fostering well-managed mobility, including intra and inter-regional labor mobility; assisting in improving national capacity building in migration management in all its components and addressing irregular migration, including through cooperation on return, in particular voluntary return, and readmission, preventing and combating trafficking in human beings and smuggling of migrants; maximizing the development impact of migration and mobility through concrete initiatives; promoting cooperation on protection and its principles for refugees and asylum seekers in accordance with relevant international conventions, and in particular the 1951 UN Geneva Convention.

The KP aims at identifying and implementing concrete projects. In the first phase, activities should concentrate on addressing trafficking in human beings, as well as smuggling of migrants. In the medium term, the activities of the KP could expand to other issues, in line with the priorities of the EU's Global Approach on Migration and Mobility (namely, legal migration, irregular migration, migration and development and international protection). It was also agreed the importance of an African ownership of the Process and the willing to carry out concrete projects financed through EU funds with the participation of international organizations such as UNHCR, IOM, and UNODC.

VI Cross cutting concerns

B. Labour exploitation

Para. 107-108:

The Italian Ministry of Labour and Social Policies is active in fighting against the illegal exploitation of non EU workers lacking valid residence permits as well as the phenomenon of *caporalato* (illegal hiring of farm workers for very low wages through an agent), aiming also at countering fiscal evasion, at safeguarding safety at work and at contrasting their illegal recruiting and employment. In all circumstances full enjoyment of rights is granted to foreign/non EU workers.

Illegal migrants are a particularly vulnerable category of workers, because they are afraid to be repatriated if their illegal status is discovered. For this reason they often accept very poor remuneration and bad working conditions, not acceptable by regular workers.

Illicit actions concerning irregular employment and job exploitation emerge above all within traditionally "crucial" sectors such as textiles and seasonal work in the agricultural field, also including the above mentioned *capolarato* phenomenon. They are monitored by regional and provincial Labour Inspection Directorates. Central Authorities target inspection activities according to a geographical and sectoral approach.

With specific reference to the outcomes of the surveillance activity carried out in 2014 by the Ministry of Labour, on a total of 140,173 companies inspected, 53% (74,745) were not in compliance with the law. The total amount of off-the-book workers was 73,508, of whom 1,018 non-EU workers lacking residence permit [mainly in Tuscany (32), Campania (165), Lombardy (143) and Emilia-Romagna Regions (110)].

In the building sector 26,998 cases were found in violation of safety rules and laws in force.

6,838 companies were obliged to suspend their activity. 5,618 resumed activity after complying with the law.

The same work opportunities are ensured for migrant workers as for Italian workers.

Moreover one of the functions of regional and provincial Labour Inspection Directorates is to report to the competent Public Security Forces the presence of irregular workers. The set of rules now in force in Italy provides for the prohibition for employers to recruit non-EU citizens lacking residence permits, imposing stricter sanctions to fight informal and irregular employment.

Law Decree No. 145 dated 23 December 2013, converted, with amendments, by Act No. 9 dated 21 February 2014, provides for a fine from 1.950 to 5.600 Euros for each employed worker, complemented by 195 Euros for each day of informal work. Furthermore if the worker lacks a residence permit (and also if the permit has been revoked, annulled or has elapsed), Legislative Decree No. 286/1998 and Legislative Decree No. 109/2014 provide for specific criminal sanctions for the employer (detention from 6 months to 3 years and a fine of 5.000 Euros for each employed worker), and an increase of the sanctions from 1/3 to 1/2 if the informal workers number more than three, or/and are minors, or/and are particularly exploited.

Moreover the employer has to pay the repatriation cost of the illegal worker. If the worker was victim of particularly severe exploitation, he/she may obtain a special stay permit, provided he/she denounces the employee and cooperates in the criminal investigations.

In the field of underground economy, the action of the Guardia di Finanza is aimed at targeting all aspects of illegality linked to the phenomenon of undeclared work - such as tax

and social contributions evasion, exploitation of illegal immigrants, social security fraud, manufacture and trade of products bearing counterfeit brands - and is focused on all labour-intensive sectors.

The activities of the Guardia di Finanza are aimed not only at recovering evaded taxes and contributions, but also at targeting assets and properties amassed by exploiting irregular workers.

In 2014 the Guardia di Finanza discovered a total of 25.305 irregular labourers, including 13.369 illegal workers and 11.936 unreported - of which 5.536 women. 3175 irregular workers and 2518 illegal workers were immigrants from non EU - countries.

5.082 employers were reported for employing irregular labour.

The investigations conducted by the Guardia the Finanza have identified the following business sectors as those prevalently affected by the phenomenon of unreported employment: the tourism and public businesses (60%), services sector (22%), the building industry (11%), agriculture (5%) and transportation (2%).

Finally Act No. 148/2011 amended the Criminal Code by inserting Art. 603-bis providing for a new sanction for the employers acting illegally as intermediaries and exploiting non EU workers, consisting of detention from 5 to 8 years plus a fine of 1.000 to 2.000 Euros for each employed worker.

VII. Conclusions and recommendations

F. Cross-cutting concerns

1. Develop and implement a national integration programme for all.

UNAR is developing the Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance, for 2015-2017. The Plan fully takes into account relevant international and national instruments, such as the Italian Constitution, especially Art.3, Legislative Decree No. 215/2003 (in accordance with Directive 2000/43/CE), Legislative Decree 216/2003 (in accordance with Directive 2000/78/CE), and Art.43 of Act No. 40/1998, concerning discrimination on the grounds of "race", skin colour, descent, national or ethnic origin, personal and religious belief, and language. In terms of scope, the Plan will consider both foreign citizens who live in Italy and Italian citizens of foreign origin, including those belonging to religious and ethnic and linguistic minorities. The Plan includes eight thematic areas/priorities, including matters of concern, actions, and objectives to be achieved also through affirmative actions in line with the legislation in force: Work and employment; Housing; Education; Health; Contacts with Public Administration; Law enforcement; Sport; Media and communication.

G. Recommendations to the European Union

156. Ensure the full implementation of responsibility sharing between EUMS in the management of its external borders, including SAR operations. In particular take into full account the geographical position of Italy that renders its coastlines particularly exposed to migration flows. This should include operational contributions to enhance SAR operations outside EUMS SRRs and permitting migrants the freedom of movement within the EU and the attribution of EU support funds to the country where migrants establish themselves as either asylum seekers.